

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

ANDREW A. HERZOG,

Plaintiff,

v.

DR. STEPHEN O'NIEL, and
CHEYENNE COUNTY MENTAL
HEALTH BOARD,

Defendants.

8:07CV498

**MEMORANDUM AND
ORDER**

This matter is before the court on Plaintiff's motion for leave to proceed in forma pauperis ("IFP"). (Filing No. 2.) Upon review of the record, Plaintiff's motion for leave to proceed IFP is granted. However, the court must determine whether Plaintiff is a prisoner and must pay the fee in installments or whether the fee is waived because Plaintiff is not a prisoner.

The term "prisoner" under the PLRA "means any person incarcerated or detained in any facility who is accused of, convicted of, sentenced for, or adjudicated delinquent for, violations of criminal law or the terms and conditions of parole, probation, pretrial release, or diversionary program." *Kolocotronis v. Morgan*, 247 F.3d 726, 728 (8th Cir. 2001)(citing 28 U.S.C. § 1915(h)). A person involuntarily committed as a mental patient, and not as a result of a criminal conviction, is not a "prisoner" for the purposes of the PLRA. *Id.*; *see also Jackson v. Johnson*, 475 F.3d 261, 266 (5th Cir. 2007); *Willis v. Smith*, No. C04-4012-MWB, 2005 WL 550528, *9 (N.D. Iowa 2005).

The record does not disclose whether Plaintiff's current commitment to the Norfolk Regional Center arises from any criminal conviction. However, to facilitate

a more expeditious resolution of this case, the court will presume that Plaintiff is residing at the Norfolk Regional Center as a patient and not as a result of a criminal conviction.

Upon review of the record, Plaintiff's motion for leave to proceed IFP is granted, and Plaintiff is relieved from the payment of the filing fee in this matter.

IT IS THEREFORE ORDERED that:

1. Plaintiff's motion for leave to proceed in forma pauperis (filing no. 2) is provisionally granted. Plaintiff shall not be required to pay the filing fee in this matter.

2. The Clerk of the court is directed to send a copy of this memorandum and order to the appropriate officials at the Norfolk Regional Center.

January 30, 2008.

BY THE COURT:

s/Richard G. Kopf
United States District Judge